

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION**

Civil Action No. 4:11-CV-00094-BO

BRUCE BANNISTER; MAX DUTTON;
and MARION TOWLES;

Towles,

vs.

WAL-MART STORES EAST, L.P.,

Defendant.

**APPENDIX TO DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT REGARDING MAX
DUTTON'S CLAIMS**

D-3

Declaration of Eric Litchfield Exhibit 3

Letter to N. Johnson from E. Litchfield re: Dutton Investigation and Summary
(9/10/2009)

September 10, 2009

Noah Johnson
Director of Operations
Region 48
Charlotte, NC

Noah,

I have conducted a review of the investigations into allegations of unethical and unprofessional conduct against Max Dutton, Store Manager, Store 2000 Kitty Hawk, North Carolina. I have reviewed the synopsis, statements and documented evidence collected by Tracey Battle (Market Human Resource Manager, Market 486) and Dawanna Riddick (Market Asset Protection Manager, Market 486) from the initial investigation beginning in May 2009. I have reviewed the synopsis, statements and documented evidence from the investigation conducted by Marie Debarros (Market Human Resource Manager, Market 125) and Adoncia Spann (Market Human Resource Manager, Market 151) from August 2009. I have also read Art Binder's (Regional Asset Protection Region 48) synopsis of his investigation.

I will outline my findings from these efforts and in accordance with PD-57 (Investigations/Suspension Policy) and present a suggested course of action to be taken in reference to the allegations and other issues uncovered during the course of the investigations.

The investigation documents many instances where associates felt intimidated by Mr. Dutton and feared retribution. Other evidence shows violations ethical conduct in violation of Walmart Policy GE-01 (Statement of Ethics). There are numerous allegations that Mr. Dutton made unprofessional comments regarding market team members, market leadership, customers and associates while on the sales floor and/or in front of associates and customers.

Here are substantiated violations of Walmart Policies:

1. Mr. Dutton knowingly let Teresa Shanefelter, an hourly associate, carry keys to the entire store. On June 12, 2009, these keys were taken from Ms. Shanefelter by Tracey Battle and Dawana Riddick. This is a violation of Walmart Policy AP-05 (Key and Door Control).
2. Mr. Dutton has provided Tersea Shanefelter his sign-on or password for The Wire, Outlook Mail, and SMART System. This is a violation of Walmart Policy IS-01 (Access Control Policy).

3. Mr. Dutton admitted in his statement of July 14, 2009, that he has for the past ten (10) years or so, utilized Mr. Art Glidden (not a Walmart Associate) to collect funds for the Children's Miracle Network (CMN). This in violation of Walmart Policies PD-38 (Solicitation and Distribution of Literature) and PD-43 (Working off The Clock). PD-43 is considered a violation since Mr. Glidden was posing as a Walmart Associate; Mr. Glidden was in Walmart dress code and inside the building posing as an associate. Consequently, he represented Walmart and must be compensated for his time.
4. Mr. Dutton solicited donations from vendors servicing Store 2000. Several donations had been made or were in the process of being made when Ms. Battle's investigation discovered them. Mr. Dutton admits in his statement of July 14, 2009, that Charlie Lipsey of George Marshall (a vendor) made a donation of \$500.00. In addition to this admission, signs soliciting vendors and additional donations from vendors were discovered in the store. This is a violation of Walmart Policies GE-01 (Global Ethics) and PD-61 (Volunteerism and Charitable Contributions).
5. Mr. Dutton hosted a raffle on or about June 14, 2009, for a \$500.00 shopping spree at Store 2000. This is a violation of Walmart Policies GE-01 (Global Ethics) and PD-72 (Prizes and Awards).
6. Mr. Dutton solicited an hourly associate to falsify a Walmart Document from the Q1 Unbeatable Excellence Review on or about April 21, 2009. This is a violation of Walmart Policy GE-01 (Global Ethics) and PD-30 (Coaching for Improvement).
7. Mr. Dutton has created a "Hostile Work Environment." Numerous associates cite instances where Mr. Dutton threatened to fire them for not doing what he asked. This is a violation of Walmart Policies GE-01 (Global Ethics) and PD-19 (Discrimination/Harassment Prevention Policy) and PD-48 (Workplace Violence).
8. Mr. Dutton permitted Tersea Shanefelter, an hourly associate, to act as a "Member of Management" by carrying keys to the store, attending salaried member of management only meetings, and act beyond her job code – Invoice Associate. This is a violation of Walmart Policy AP-05 (Key and Door Controls).
9. Mr. Dutton has an unprofessional relationship with Ms. Shanefelter. This is a violation of Walmart Policy PD-30 (Coaching for Improvement).
10. Mr. Dutton improperly questioned several associates about statements made during this investigation. This is a violation PD- 19 (Discrimination/Harassment Prevention Policy).

As a result of my review of these investigations, I believe that other violations of Walmart Policy and state law may have occurred which would require further investigation by an attorney or other qualified investigator.

Based upon the facts presented to me, I believe that Mr. Dutton's actions were not in keeping with direction and guidance provided him and that he violated numerous Walmart Policies which warrant termination of his employment.

Sincerely,

Eric L. Litchfield
Market Manager
Market 486
Greenville, NC 27834